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STATEMENT FOR THE RECORD

SUBMITTED TO THE

SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

on

"Enhanced Consumer Protection After the Financial Crisis"

July 19, 2011

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On behalf of our members and all Americans age 50 and older, AARP appreciates the opportunity to submit written comments in connection with the July 19, 2011, hearing of the Senate Banking Committee on “Enhanced Consumer Protection after the Financial Crisis.”

Consumer Financial Products and the Older American

A major priority for AARP is to assist Americans in accumulating and effectively managing adequate retirement assets. A key to achieving this goal is helping individuals better manage financial decisions and protecting consumers from financial fraud and abuse that can erode retirement savings and financial assets.

Although older households long have been considered among the most frugal and resistant to consumer debt, changing economic conditions -- particularly declining pension and investment income and rising costs for basic expenses such as prescription drugs, health care, and utilities -- have forced many seniors to rely increasingly on credit to make ends meet.[1]

To meet the challenges of this dynamic marketplace and ensure the economic security of older persons, AARP has recommended that the quality of consumer information in the marketplace be improved to increase the level of consumers’ financial literacy, particularly among baby boomers, minorities and low-income people.

But education alone is not enough. Many people often are unaware of the terms and conditions that govern credit products because the required legal documents and consumer disclosures are beyond the understanding of a large portion of the population. When coupled with bad advice, abusive practices, or fraud, the variety and complexity of credit products can be intimidating and confusing for even the most well informed consumers. As such, we must also commit to increasing consumer protections to prevent harmful financial services and practices that – as the recent economic turmoil clearly demonstrates – threaten not only individual financial security, but also that of the nation.

The scope and extent of abusive and deceptive consumer practices is astounding. Billions of dollars are lost every year through various types of fraudulent and deceptive consumer practices that affect thousands of consumers. Moreover, older Americans are

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[1] *See* Deborah Thorne, Elizabeth Warren, Teresa A. Sullivan, *Generations of Struggle* (June 2008) available at http://www.aarp.org/money/budgeting-saving/info-06-2008/2008_11_debt.html.

disproportionately affected by these deceptive consumer practices. Although older people make up just 12 percent of the population, they constitute a full 30 percent of the victims of consumer fraud crime. Women, who make up an increasingly larger percentage of the older population by virtue of a longer life expectancy, are the majority of the victims. Consequently, consumer fraud is listed by every state as the major non-violent crime perpetrated against people.[2]

Not only are older people more likely targets of consumer fraud, they are also different from younger consumers in the intensity of the overall impact of such abuse on their lives. Having lower or fixed income and fewer years of work to recover from a financial setback makes older people particularly vulnerable. Fear of losing independence and control over their finances may contribute to their reluctance to pursue a remedy when an abuse occurs. Many consumers do not know how or to whom to complain even if they do want to seek a remedy.

It is well established that the failure of the regulatory system to rein in abusive types of consumer loans in areas where federal regulators had clear authority to act, and either chose not to do so or acted too late to stem serious problems in the credit markets, was a major factor in the recent financial crisis. As such, a key goal for AARP in the Wall Street Reform and Consumer Financial Protection Act (Dodd-Frank Act) was strengthened consumer protection to restore market accountability and responsibility, rebuild confidence, and ensure the stability of the financial markets. Surveys conducted by AARP demonstrate that Americans age 50+, regardless of party affiliation, want Congress to act to hold financial institutions accountable.

When Congress passed the Dodd-Frank Act, it did so to address in a coordinated fashion some of the worst abusive practices that put all Americans at risk. AARP supported the creation of the Consumer Financial Protection Bureau (CFPB) with the sole mission to serve as an independent watchdog for American consumers. The CFPB will help ensure that consumers have the information they need to make the financial choices that are best for them and prevent abusive and deceptive financial practices. A streamlined and coordinated approach to financial regulation and consumer protection will better protect the financial security of all Americans.

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[2] *See Top 10 List Of Consumer Complaints of 2008 Resource List*, (March 2010), available at http://naag.org/top-10-list-of-consumer-complaints-of-2008-resource-list.php (listing Debt Collection, Auto Sales, Home Repair/Construction, Credit Cards / Internet Goods and Services (tie), Predatory Lending/Mortgages, Telemarketing/Do-Not-Call, Auto Repair, Auto Warranties / Telecom/Slamming/Cramming (tie) as top 10 consumer complaints).

In particular, the CFPB must address the following practices that continue to threaten the financial security of older people:

Mortgages

Bad mortgage lending was a leading cause in the downturn of the economy. Reform of mortgage origination and servicing practices is an essential element in its recovery. Although interest rates are currently at historic lows, the housing sector generally, and mortgage lending in particular, are in a holding pattern. While Congress has enacted significant reform targeted at the most egregious mortgage origination abuses, including the inability to repay, kickbacks that drove up the price of borrowing, and curbs on the toxic adjustable rate mortgages that plagued the market in recent years, a great deal of work remains to be done. The mortgage origination protections must be implemented with clear and strong regulations. Just as importantly, homeowners must be protected from the abusive servicing practices that add high and often unwarranted fees and insurance to their mortgage accounts; from an inadequate "loan modification" process that saves few homes; and from the shoddy and fraudulent conduct that underlies far too many of the foreclosures nationwide.

It has long been understood that older homeowners were often the targets of the predatory lending practices that began in the early 1990's. Older homeowners had equity in homes they had owned for decades. Yet they were living on fixed incomes, making home maintenance and repair difficult. They were – and remain -- often vulnerable: they may be without a support network; conversely, they may be rearing grandchildren and otherwise providing housing and support for other family members; or they may be suffering from some diminished capacities. Experience with countless older homeowners over the years has repeatedly demonstrated that, despite good – often sterling – credit ratings, they were steered to subprime lenders whose unscrupulous practices are now well documented.[3] Despite legal and legislative advocacy by AARP and countless others, far too many older Americans who entered into questionable mortgages currently face foreclosure and eviction from homes they have lived in for decades.

AARP believes the CFPB must play a major role in ensuring a fair mortgage marketplace going forward and in redressing past wrongdoing.

Credit Cards

Despite enacting important protections in 2009, more must be done to protect consumers from unfair or predatory practices, hidden fees, and complicated terms and conditions in

[3] *See* Alison Shelton, *AARP Insight on the Issues 9* (Sept. 2009), http://www.aarp.org/money/credit-loans-debt/info-09-2008/i9_mortgage.html.

credit card agreements. Consumers need protection from efforts to evade the protections of the CARD Act, as well as the marketing of expensive and predatory credit card products, and complex fee structures that hide the true expense of credit and make it difficult for consumers to shop for the lowest priced credit card products that meet their needs.

Overdraft Fees

Despite new rules requiring consumers to "opt in" before being charged overdraft fees on their ATM and debit cards, many consumers continue to be charged unfair overdraft fees by banks. The most vulnerable consumers – those with the least amount of money – are often hardest hit by practices such as aggressive or deceptive inducement to opt in to overdraft protection, reordering of transactions to increase fees, and steering consumers into accounts or fee structures that maximize imposition of fees without informing them of less expensive overdraft protection options.   Consumers should be protected from banking practices that unfairly siphon off their limited income.

Prepaid Debit Cards

Consumers increasingly use prepaid debit cards for purchases. In part this has resulted from government benefit administrators utilizing prepaid debit cards to help reduce the cost of benefits disbursement. Despite the convenience provided by such cards, they can be very costly to consumers. Many charge high fees for periodic statements or transaction information, to check balances, decline transactions, to access funds at an ATM, or to load funds onto the card. Moreover, consumers do not understand that prepaid debit cards carry less protection than other payment instruments such as ATM or credit cards. Prepaid cards do not give consumers full protection from loss, theft or unauthorized charges. They may also open unbanked consumers to the risk that payday lenders may seek to secure loans with the receipt of public benefits deposited onto prepaid cards. In light of the increasing use of such cards, protections should be enhanced to ensure that consumers are not harmed by high fees, inappropriate assignment of exempt public benefits, and misrepresentations of the terms and conditions for use of such cards. In particular, government benefits administrators must take additional steps to protect beneficiaries against high costs and fees.

Other Abusive Loans

High cost lending practices by both mainstream and alternative financial services providers that charge high fees and interest costs that can exceed 400% seriously threaten the financial security of the most vulnerable borrowers.[4] Vulnerable borrowers who cannot meet their most basic needs of food, shelter, or healthcare are most often the targets. Deceptive practices include those by payday, auto and auto title lenders, as well as car dealers, who often exact high tolls on those who can least afford it. At tax time, many consumers are targeted by tax preparation companies to get an instant refund -- really a loan – for which consumers are unknowingly charged hefty tax preparation and loan fees. Billions of dollars of Earned Income Tax Credits -- intended to keep hard working families out of poverty -- are siphoned off in high fees and charges; sadly, most of the borrowers are eligible to have their taxes prepared for free, with quick refunds through electronic deposit, without paying all the fees. Federal preemption of state consumer protection laws has opened the door to increased abuse, leaving consumers further exposed to unregulated and often deceptive lending practices. It is time to close the door to abusive high cost lending practices, no matter who the lender.

Credit Reports

Fair and accurate credit reporting is essential to protecting the financial security of consumers. A consumer's credit report impacts not only the price and availability of credit but also of auto and homeowner's insurance, access to housing, and opportunities for employment. Unfortunately, consumers have difficulty correcting their credit reports when they contain significant inaccuracies that result from mistakes, incorrect and outdated information, fraudulent accounts due to identity theft, and mixed up files of different consumers. Consumers also need better guidance on how to check and correct their credit reports. Because so few consumers understand what will cause a decrease or increase in their scores, or the magnitude of the impact of particular actions such as closing a credit card account, making a late payment or filing for bankruptcy, more consumer education is needed to give them consumers he tools they need to improve their financial outlook. Lack of information and the wide variety of credit scores in the marketplace makes consumers more vulnerable to predatory lending, credit repair scams or higher priced lending and insurance than for which they should qualify. Much more needs to be done to ensure credit reporting is fair, accurate, and transparent.

[4]*See* Ann McLarty Jackson, Donna V.S. Ortega, Elizabeth Costle, George Gaberlavage, Naomi Karp, Neal Walters, Vivian Vasallo, *A Portrait of Older Underbanked and Unbanked Consumers: Findings from a National Survey* (Sept. 2010), available at http://www.aarp.org/money/credit-loans-debt/info-09-2010/D19394.html.

Debt Collection

The Federal Trade Commission and state attorneys general have received more complaints about the debt collection industry than any other for more than ten years, and the number of complaints is increasing. As more and more consumers carry ever higher levels of debt, the debt collection industry, assisted by technological advances in data storage and communications capabilities, has been transformed into a trillion dollar debt buying and collection industry over the span of a decade.

Debt once considered to be uncollectible is charged off by creditors and sold at auction for pennies on the dollar. Using increasingly aggressive and often illegal collection tactics, collectors pursue alleged debtors well after the statute of limitations has run, often with little or no documentation to prove the ownership or amount of a debt. Unrepresented debtors who do not understand how to protect their interests or assert valid defenses have little, if any, ability to protect themselves or may unknowingly agree to extend the time a debt may be collected by making a minimal payment in an attempt to end harassing collection attempts.

Abusive collection tactics have caused significant harm and suffering to consumers, as well as taxed the resources of state Attorneys General. The high level of fraud inherent in the current collection environment should be addressed comprehensively.

Forced Arbitration

Consumers who purchase financial products or services routinely are required to give up their access to justice if the company violates the law. By inserting a forced arbitration agreement in a standard contract, a business can exempt itself from any possibility that it will be held accountable in any meaningful way for violations of the law. Forced arbitration clauses already are ubiquitous in contracts of adhesion for every type of consumer service and product. The recent Supreme Court decision in *AT&T Mobility, LLC v Concepcion*[5] undermines consumer challenges to forced arbitration clauses because the Supreme Court has held that federal law preempts certain state contract law defenses. Forced arbitration creates an unlevel playing field for consumers, without review by any court – further eroding consumer protections. The ability of corporations to include a forced arbitration clause in a standard form contract places an even higher burden on already cash strapped public enforcement systems to monitor harmful and deceptive acts and practices.

[5] *AT&T Mobility, LLC v. Concepcion,* 131 S. Ct. 1740 (2011).

Conclusion

These examples are but a few of the abusive financial services practices that face consumers, demonstrating the significant need for the CFPB. One key lesson is clear – consumers need help to protect themselves in the increasingly complex and rapidly changing technological global marketplace. As was so painfully demonstrated just a few short years ago, the threats to personal financial security are threats to the nation's financial stability and security. Thank you for this opportunity to share AARP's views.